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2600 CENTURY SQUARE • 1501 FOURTH AVENUE • SEATTLE, WASHINGTON 98101-1688
(206) 622-3150

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Suite 222
Washington, D.C. 20554

RE: CC Docket No. 94-54, In the Matter of Equal Access and
Interconnection Obligations Pertaining to Commercial
Mobile Radio Services

Dear Mr. Caton:

Enclosed are an original and ten copies of the Comments of
Claircom Communications Group, L.P. for filing in the above
captioned proceeding and distribution to the Commissioners.

Also enclosed is a stamp and return copy. Please date stamp
the extra copy and return it to our messenger for delivery to our
office.

Thank you for your kind attention to this matter.

Sincerely,

DAVIS WRIGHT TREMAINE

By: *R. Bruce Easter*
R. Bruce Easter, Jr.

Enclosures

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the matter of Equal Access)
 and Interconnection Obligations)
 Pertaining to Commercial) CC Docket No. 94-54
 Mobile Radio Services)
 _____)

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**COMMENTS OF
 CLAIRCOM COMMUNICATIONS GROUP, L.P.**

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

SUMMARY

Claircom Communications Group, L.P. ("Claircom"), a leading provider of air-ground service, respectfully submits these comments with respect to equal access for CMRS carriers. Claircom generally supports the Commission's tentative conclusion to address CMRS equal access obligations on a service specific basis. However, substantially similar services in similar competitive markets should be considered and treated comparably by the FCC. In this way, the Commission can maintain regulatory parity, while distinguishing among different CMRS services operating under different market conditions.

If the Commission is considering universal imposition of CMRS equal access, Claircom urges the Commission, in light of the unique and emerging technological nature of air-ground services, not to impose traditional equal access. Instead, the Commission should allow air-ground providers maximum flexibility in making access to interexchange carriers available. To this end, if a form of equal access is mandated, Claircom supports optional air-ground service access to a user selected interexchange carrier

through 950, 800, and/or 10XXX dialing, as may be requested and negotiated by air carriers.

A. The Commission Should Consider Equal Access on a Service-by-Service Basis for Substantially Similar Services and Markets

1. **The Purpose of Equal Access was to Ensure Monopoly Local Service Customer Choice and that those Customers Received the Benefits of Long Distance Competition.**

Equal access was initially imposed on the wireline local exchange monopolies in order to promote competition among long distance carriers. The market dichotomy at that time -- local service monopolies and multiple long distance service providers -- led to a relatively simple market partition. LATA boundaries were established, based on then perceived economic and population regions, which defined the reach of local service. For call delivery beyond these newly defined bounds, calls were handed to interexchange carriers for transmission to the local service provider of the called party.

Equal access allowed each customer of the local monopoly to choose a long distance carrier through balloting. With the exception of unauthorized switching, the customer's choice would remain in place until the customer elected to change long distance carriers. Under equal access, no long distance carrier gained a technical or marketing advantage through its interconnection with the local monopoly.

The fundamental equal access questions now posed for this Commission are: (1) whether the market dichotomy of ten years ago logically extends to all of the CMRS marketplace, and (2) whether the solutions designed to resolve a particular antitrust lawsuit

ten years ago are appropriate regulatory burdens to impose on the entire CMRS marketplace. Claircom submits that the answer to both questions is no.

2. Given the Varied Market and Technical Characteristics of CMRS Services, Including Air-Ground Services, the Commission Should Not Universally Impose Equal Access.

CMRS services have been, and likely will continue to be, licensed in a variety of ways. Cellular service spectrum, for example, initially was to be issued to a single provider per market. However, in 1981 the Commission decided to create a competitive market by issuing two licenses for each service area.¹ Thus, as opposed to the wireline monopoly market structure of the early 1980's, each cellular license area now would have two competing carriers, plus resellers. With the licensing of PCS services, the mobile telephony markets will be joined by a number of new competitors. Land-based mobile telephony would thus appear to present one segment of CMRS services in which equal access costs and benefits, if any, could be assessed.

Similarly distinguishable from the 1980's wireline monopoly market structure are other CMRS services. Air-ground service, as is discussed below, was licensed to allow multiple carriers to compete nationwide by sharing the available spectrum. The recently auctioned national PCS licenses contemplate multiple providers of national paging services. The upcoming PCS auctions

¹ See In re Inquiry Into Use of Bands 825-845 Mhz and 870-890 Mhz for Cellular Communications Systems, 86 F.C.C.2d 469, ¶¶ 4, 15 (1981).

also contemplate multiple service providers for smaller service areas. Thus, not only do the competitive market structures for these services vary widely, the basic service areas and technical delivery of services also are significantly different.

These essential market structure and service differences render blind imposition of equal access on all CMRS providers inappropriate. Instead, the Commission should consider what goals equal access would achieve, and then whether to impose a form of equal access by considering its costs and potential benefits in the context of both the market structure and the technical characteristics of substantially similar CMRS services. As is demonstrated below, air-ground service presents a market segment in which traditional equal access service would be technically infeasible and the costs are unknown.

**B. Air-Ground Service Market Structure and
Technical Service Delivery Renders
Traditional Equal Access Inappropriate.**

**1. Traditional Equal Access Presubscription is Unworkable
for Air-Ground Service**

As the Commission recognized in its initial TOCSIA ruling,² air-ground service providers may technically be considered aggregators. Assuming, therefore, that users are transient, which clearly is the case for commercial airline service users, those users do not have a pre-established relationship with either the air-ground provider or any particular long distance

² In re Petition for a Declaratory Ruling that GTE Airfone, et al. are not Subject to the Telephone Operator Consumer Services Improvement Act ("TOCSIA"), 8 Fcc Rcd 6171, ¶ 16 (1993).

carrier for a flight. Indeed, the air-ground carrier may be different from flight to flight depending upon the air carrier chosen by the user.

Under these circumstances, traditional equal access presubscription cannot be imposed. The user of each seatback telephone likely will be different for each flight. Equal access, if it is to be imposed in some manner, will require some form of customer choice and/or default with each call.

2. The Market for Air-Ground Service is a Competitive National Market Regulated by Air Carriers' Periodic Selection of Air-Ground Service Providers.

The Commission authorized air-ground service in 1990. At that time, three distinctive air-ground licensing proposals were considered: (1) maintaining a single provider, (2) licensing two carriers with exclusive blocks of spectrum, or (3) licensing multiple carriers, which would share the radio spectrum. Choosing to promote competition among a number of providers, the Commission selected the spectrum sharing plan, open entry, and limited technical requirements.³ The Commission approved five applications; three carriers are now operational: GTE Airfone, In-Flight, and Claircom.

The Commission recognized that the competitive arena for air-ground carriers was not direct competition for end users. Rather, the competitive arena was between and among the airlines on behalf of their customers. "[T]he airlines will have

³ See In re Amendment of Commission's Rules Relative to Allocation of the 849-851/894-896 Mhz Bands, 5 FCC Rcd. 3861 (1990).

incentives to act on behalf of their customers to choose among service providers in a manner that provides high quality service at low prices."⁴

Indeed, in order to promote such competition, the Commission ordered GTE Airfone to void, and notify its customers that GTE would not enforce, restrictive covenants in contracts entered into under GTE Airfone's experimental license. As the Commission noted then, "[t]o allow competition to develop fully in the air-ground market, airlines need to be able to terminate, at their option and without penalty, contracts entered into prior to December 24, 1990, . . . regardless of the contract termination provisions."⁵

Under the Commission's structure, the air carriers negotiate on behalf of themselves and their customers in order to offer the best and lowest priced air-ground service as a part of their package of air carrier services. Some air carriers may prefer flexible rates and a form of equal access, others may prefer a total service package, with a fixed per call rate. Air-ground providers should have the flexibility to respond to competitive demands and make these and other kinds of offerings available.

⁴ Id., 5 FCC Rcd. 3861, ¶ 35 (1990). See also In re Implementation of §§ 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Carriers, 74 Rad. Reg.2d 835, ¶ 144 (1994).

⁵ See In re Amendment of Commission's Rules Relative to Allocation of the 849-851/894-896 Mhz Bands, 6 FCC Rcd. 4582, ¶¶ 4-8 (1990).

3. The Terrestrial Long Distance Portion of an Air-Ground Call is De Minimis When Compared to the Radio Service.

In its initial authorization order, the Commission correctly observed that construction of a national air-ground system with numerous coordinated ground stations would require millions of dollars. For Claircom's system, these ground stations capture calls from the planes overhead, pass the calls between ground stations as planes rapidly change location, and transmit the calls via a private network to a switch and credit evaluation processing center. The center then approves the call and interconnects it through the switch with the public switched telephone network. The costs of establishing this new national network were enormous for each air-ground carrier. Indeed, the traditional terrestrial long distance component of air-ground calls is minor in comparison to the air-ground portion of the call.

Because of the high-cost nature of the service, air-ground service providers have a strong interest in increasing call volumes and, consequently, keeping overall pricing levels reasonable. Making customer choice available for terrestrial carriers could increase customer use of air-ground services, which Claircom obviously would strongly support. But there is no evidence that mobile air-ground users or their air carriers would prefer the ability to select the terrestrial carrier on air-ground calls, or that equal access would increase call volumes.

4. **Air-Ground Service Pricing is not Distance Sensitive.**

Unlike terrestrial long distance service, pricing for air-ground service is not distance sensitive. The plane's connection to a particular ground station has no consistent bearing on the cost of a call. The plane's location changes rapidly as can the connecting ground station during the call, and the plane may move closer to or further away from the location of one or more call switching centers. For this reason, Claircom believes that air-ground radio and long distance service should be offered under a consistent flat per minute rate. Providing a form of equal access may allow end users to change the rates for the terrestrial long distance portions of calls. However, that portion likely would be small element of the overall price of the call. And in some cases, the long distance carrier selected by the end user may charge more than the carrier normally utilized by the air-ground service provider. Given the relative components of air-ground calls and the pricing variables, equal access should not be the price tail that wags the air-ground service dog.

C. The Commission Should Allow Air-Ground Carriers Flexibility to Implement Dial Around Access on an as Requested Basis.

1. **Dial Around Access Provides End Users Choice and the Convenience of a Default Carrier.**

Under the aggregator environment of air-ground service, consumers must first choose from a variety of billing vehicles before calling. That billing vehicle typically is a credit card, but it could be a long distance carrier calling card. For air

carriers that prefer that their customers have access to a variety of long distance carriers, then dial around access, i.e., dialing a 950, 800, or 10XXX number would provide an appropriate method of access. The air-ground carrier, already informing users how to implement call billing, could also inform end users that other long distance carriers are available for part of the call.

Those who chose to select a particular carrier would have calls routed to that carrier from the air-ground switch. (Routing from the ground stations would be technically infeasible for Claircom and likely for the other carriers as well.) Those who did not choose a terrestrial carrier, would have calls default to the carrier with whom the air-ground carrier has negotiated a carriage arrangement. Dial-around access, therefore, would provide consumers with choice and the potential to receive the benefits of long distance service competition.

Implementing such service, however, would not be without costs, such as costs associated with switch modifications. If the Commission investigates air-ground equal access, it should ensure that such costs would be recovered and that the equal access benefits outweigh the costs.

2. Air-Ground Arrangements with Long Distance Carriers Should be Flexible and Promote Air-Ground Competition.

Because the focus of air-ground competition is between air-ground providers for air carrier business, the Commission should allow air-ground providers to develop a variety of arrangements with long distance providers. Price savings negotiated among the

terrestrial carriers could then be passed on to end users under one or more postalized rates for calls. Furthermore, because of the unique national radio character of air-ground service, air-ground calling should be considered as a whole, rather than the sum of disparate parts. In this light, it is clear that terrestrial long distance is a small portion of any air-ground call, and, therefore, the long distance portion should be considered an integral and inseparable part of an air-ground call for pricing purposes.

Conclusion

Universal imposition of equal access and tariffing of terrestrial carrier pricing would fundamentally undermine the competitive structure established by the Commission for air-ground services. Accordingly the maximum the Commission should impose is dial around capability. But imposition of even this requirement should be flexible and made available as dictated by the negotiations between the air carriers and the air-ground service providers.

DATED this 12th day of September, 1994.

Respectfully submitted,
CLAIRCOM COMMUNICATIONS GROUP, L.P.

By: R. Bruce Easter

R. Bruce Easter, Jr.
of
Davis Wright Tremaine
One of Claircom Communications
Group, L.P.'s Attorneys
Suite 600
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2608
202-508-6600